

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. § 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 5. CORPORATION COMMISSION TRANSPORTATION

PREAMBLE

1. Sections Affected
R14-5-101
R14-5-104
- Rulemaking Action
Amend
Amend
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statutes: A.R.S. §§ 40-102, 40-106, 40-107, 40-202, 40-203, 40-204, 40-331, 40-332, 40-336, 40-841, and Arizona Constitution, Article 15, §§ 2, 3, 4, 6, and 10.
Implementing statute: Not applicable.
3. The effective date of the rules:
May 31, 1996
4. A list of all previous notices appearing in the Register addressing the exempt rule:
Notice of Exempt Rulemaking:
94 A.A.R. 278, November 30, 1994
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Peter Breen, Attorney
Address: Corporation Commission, Legal Division
1200 West Washington
Phoenix, Arizona 85007
Telephone: (602) 542-3402
Fax: (602) 542-4870
6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:
The Corporation Commission amended Railroad Safety Rules R14-5-101 and R14-5-104. The amendments are designed to enhance the public safety at railroad crossings by prescribing certain conditions which must be met before the onset of any construction project at or near a railroad crossing. The rules require any person temporarily reconfiguring a grade crossing as the result of a construction project to ensure that temporary traffic control measures are in place to maintain the safety of the crossing. The rules also require the person responsible for the construction project to provide written notification of the project to the track owner and the owner of the trains using the track. The Corporation Commission has determined that rules in this Chapter are exempt from the Attorney General Certification provisions of the Administrative Procedure Act (A.R.S. § 41-1041) by a court order (State of Arizona v. Arizona Corporation Commission, 114 Ariz. Adv. Rep. 36 (Ct. App. 1992)).
7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
8. The summary of the economic, small business, and consumer impact:
These amendments are designed to enhance the public safety at railroad crossings. Sometimes, when a construction project is to take place at or near a railroad crossings, there is a need to temporarily alter the path that road traffic would normally take when crossing over the railroad.

Arizona Administrative Register
Notices of Exempt Rulemaking

These amendments would require that persons responsible for the project contact the owner of the railroad track and of trains using the track involved prior to making any changes to the normal traffic pattern at the crossing. The responsible person(s) is also required to ensure that temporary traffic control measures are installed to maintain the safety of the crossing. The classes of persons affected by these rules are general contractors or other persons intending to do a construction project at or near a railroad crossing, owners of railroad track or track equipment, and governments involved in certain road projects.

These rules will assist Corporation Commission in fulfilling its responsibilities toward railroad safety but will not cause it to incur additional costs. Political subdivisions engaged in some road projects would have to ensure compliance with the rules. There will be no cost to taxpayers.

The rules do not require obtaining permission from the Corporation Commission or other governmental agencies before doing a project. The rule requires that the person in charge of the proposed construction project contact the track owner prior to construction to ensure that the proper traffic controls are set in place before commencement of the project.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
Not applicable.

10. **A summary of the principal comments and the agency response to them:**

Atchison, Topeka, and Santa Fe Railway Company asserted that the rules improperly shift the exclusive power of the Commission for protection of railroad crossings to the owners and operators of tracks and equipment by requiring that notice of temporary reconfigurations of at-grade crossings be given to railroads. It suggested that the notices be sent to the Corporation Commission instead.

The railroad objected that the rules do not identify the individual to receive the notice or detail the responsibilities of owners concerning the accuracy of the notice, compliance with the rules, and the duration and scope of such responsibilities. Santa Fe contended that the rules would not materially advance crossing safety because most of the construction to which the rules apply are not carried out in the railroad right-of-way but in the street right-of-way, where railroads have no authority. The railroad also commended that the rules might impose administrative costs and potential substantial civil liability on owners and operators.

The Corporation Commission responded that there is no shifting of its jurisdiction to the railroad because the rules only require notice to the railroads. Staff noted that a railroad is not required to investigate and approve the plans of the contractor.

Staff disagreed that the rules would increase railroads' exposure to tort liability. It noted that the bulk of the duties under the rules are placed on the contractors doing the work, rather than the railroads. If a railroad believes that a contractor's activity is hazardous, it may seek an order from the Commission resolving the safety issue. Further, because the purpose of the rules is to reduce at-grade railroad crossing accidents, staff commented that the avoidance of only a few such accidents would be of economic benefit to railroads.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.

12. **Incorporations by reference and their location in the rules:**
Not applicable.

13. **Was this rule previously adopted as an emergency rule?**
No.

14. **The full text of the rules follows:**

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND
ASSOCIATIONS; SECURITIES REGULATION**

**CHAPTER 5. CORPORATIONS COMMISSION
TRANSPORTATION**

ARTICLE 1. RAILROADS

Section

R14-5-101. Definitions

R14-5-104. Railroad-highway Crossings

ARTICLE 1. RAILROADS

R14-5-101. Definitions

As used in this Article:

1. "Car stop" means a device installed or constructed at the end of a spur track to prevent railroad cars from going off the rails.
2. "Commission" means the Corporation Commission.
3. "Configuration of a public railroad-highway grade crossing" means the physical characteristics of the crossing,

including, but not limited to, size and type of warning devices, path of the roadway over the railroad track or tracks, warning signs, pavement markings, and roadway crossing surface.

3-4. "Constructive placement" means cars cannot be delivered to the designated private siding because of the inability of the consignee to receive them. The cars are placed in a sliding, another private track, or interchange track near the consignee's facility until such time as they can be delivered to the consignee.

4-5. "Event recorder" means a device located in the locomotive that records information reflecting the operation of the train, including on speed, elapsed time, direction of

Arizona Administrative Register
Notices of Exempt Rulemaking

travel, load (amps), automatic brakes, dynamic brakes, and throttle settings.

- ~~5-6.~~ "Hazardous materials" means any hazardous substance as defined by A.R.S. § 49-201(16)(a), (b), (c), (e), and (f).
- ~~6-7.~~ "Highway authority" means the county, municipal, or other local board or body exercising jurisdiction over highways under the laws of this state.
- ~~7-8.~~ "House track" means a track adjacent to or entering a freight house, used for the primary purpose of receiving or delivering freight.
- ~~8-9.~~ "Industrial track" means a track or portion of track over which a railroad operates but which the railroad does not own or maintain either the rails, ties, or roadbed; or a track or portion of track which is devoted to the purpose of the user, either by lease or written agreement, in which case the lease or written agreement shall be considered as equivalent to ownership.
- ~~9-10.~~ "Ladder track" means a track connecting successively the body of tracks of a train yard.
- ~~10-11.~~ "Locomotive" means a self-propelled vehicle running on rails and generating or converting energy into motion for the primary purpose of hauling rail cars.
- ~~11-12.~~ "Overhead clearance" means the vertical distance from the level of the top of the highest rail to a structure or obstruction above.
- ~~13.~~ "Person" means any individual, firm, joint venture, partnership, corporation, association, municipality, governmental unit, department, or agency and shall include any trustee, receiver, assignee, or personal representative thereof.
- ~~12-14.~~ "Private grade crossing" means any crossing where a legal agreement exists between a private property owner and a railroad company for the exclusive use of the landowner and the landowner's invitee.
- ~~13-15.~~ "Public grade crossing" means any crossing, used by the general public, for which a legal agreement between a private property owner and a railroad company does not exist.
- ~~14-16.~~ "Rail gage" means the distance between the heads of the rails, measured at right angles to the rails in a plane 5/8 of an inch below the top of the railhead. Standard gage is 4 feet, 8 1/2 inches.
- ~~15-17.~~ "Railroad" means every railway, other than a street railway, operated for public transportation of persons or property.
- ~~16-18.~~ "Reconstruction" means the use of more than 50% of the material necessary to replace an entire structure or facility, or more than 50% of the current value of an entire installation.
- ~~17-19.~~ "Side clearance" means the shortest distance from the centerline of track to a structure or obstruction at the side of the track.
- ~~18-20.~~ "Spur track" means a stub track of indefinite length diverging from a main track or other track.
- ~~19-21.~~ "Team track" means a track subject to general use by the public for the loading or unloading of freight cars.
- ~~20-22.~~ "Unauthorized grade crossing" means any grade crossing that is not a public grade crossing or a private grade crossing or has not been issued an AAR/DOT crossing inventory.

R14-5-104. Railroad-highway Crossings

- A. The following rules shall apply in the construction, reconstruction, improvement, and maintenance of all public railroad-highway grade crossings within the state of Arizona. This Section is intended to be consistent with the provisions of the

Manual on Uniform Traffic Control Devices, as adopted by the Department of Transportation.

1. No construction project taking place at or near a public railroad-highway grade crossing shall diminish the safety normally provided to a motorist approaching the crossing by the existing warning devices.
2. No temporary change in the configuration of a public railroad-highway grade crossing, for the purpose of facilitating a construction project at or near the crossing, may be made by any person without 1st notifying the owner of the railroad track and the owner of the trains or other track equipment operating over such track in writing. The letter notifying the track owner and train/track equipment owner shall describe the date, place, and type of changes to be made. Such letter shall be written and signed by the responsible person for the project and shall constitute an affirmation that all temporary traffic control measures to be implemented due to the project shall be made in accordance with this rule and the Manual on Uniform Traffic Control Devices (MUTCD) Parts VI and 8A-5. Notice shall be sent by registered mail, return receipt requested, to the business address of the owner of the railroad track and the owner of trains or the track equipment operating over such track, or to the statutory agent at its known place of business, not less than 10 days prior to the commencement of the construction project.

B. Warning signals.

1. Railroad crossbucks.
 - a. A railroad crossbuck shall be installed on the right-hand side of the public roadway on each approach to every crossing to warn motorists approaching from each direction, except at crossings where automatic control devices are in use in conformance with Appendix 8.
 - b. If there are 2 or more tracks, the number of tracks shall be indicated on an auxiliary sign of inverted "T" shape mounted below the crossbuck, (See in conformance with Appendix 8).
 - c. Crossbucks shall be located at not less than 15 feet from the centerline of the nearest track, and shall be in a position to be visible to motorists.
 - d. Crossbucks shall be a reflectorized white "X" (48" X 9" panels drilled for a 90-degree mounting) with the words "RAILROAD CROSSING" in black letters.
 - e. The distance that shall be assumed to separate tracks before additional crossbucks are considered necessary is 100 feet.
2. Automatically controlled crossing signals.
 - a. At railroad-highway grade crossings where studies indicate the need for warning beyond that provided by crossbucks, the Commission may order that automatically controlled crossing signals be installed.
 - b. Emergency stand-by power shall be provided for the operation of all automatically controlled crossing signals.
 - c. Automatically controlled crossing signals shall be arranged to provide not less than 20 seconds warning for motorists.
 - d. Signals shall operate until the rear of the last train using the crossing has cleared the crossing.
 - e. Traffic signals located within 200 feet of railroad crossing signals shall be preempted by the railroad crossing signals.
 - f. Where means are provided for cutting-out the automatically controlled warning devices during intervals when trains are making regular operating stops

Arizona Administrative Register
Notices of Exempt Rulemaking

- or performing switching operations on approach circuits, controls shall be arranged as follows:
- i. Controls shall be so designed as to provide operation of warning devices before a train reaches the crossing.
 - ii. Automatic control of warning devices actuated by approaching trains (other than the train that has stopped or is performing switching operations) shall take precedence over any cut-out feature.
 - g. Where manual supervisory control of warning devices is provided in addition to automatically controlled signals, the following shall govern:
 - i. Automatic control, when actuated by approaching trains other than the train for which manual control has been made effective, shall take precedence over manual control;
 - ii. Means shall be provided to restore the controls to automatic operation;
 - iii. Means shall be provided to prevent manual operation by unauthorized persons.
3. Flashing light signals.
- a. Lamp units (center of lens), shall be located at not less than 8 feet, 4 inches, nor more than 10 feet, 4 inches above the crown of the roadway.
 - b. Signal lights shall shine in both directions along the roadway, and shall be mounted horizontally, 2 feet, 6 inches to centers.
 - c. Lamp units shall be arranged in pairs, back to back, except on 1-way streets or other roadways where highway traffic approaches from 1 direction only.
 - d. Lamp units shall be equipped with mountings to provide ready adjustments in all directions with positive locking for such adjustments.
 - e. Lamp units shall be provided with hoods of not less than 12 inches in length and with backgrounds 20 inches in diameter. Hoods and backgrounds shall be in black, except that when backlights are omitted, the back of the lamp unit and background shall be aluminum-colored so that the signal will not be mistaken for a dark signal.
 - f. Lamp units installed after the effective date of this Section shall have lenses or roundels, red in color, not less than 12 inches in diameter for both front and rear indications. Lamp units in use prior to the adoption of this Section shall be made to meet this requirement when the automatic warning devices are upgraded, improved, or reconstructed.
 - g. The beam spread shall be not less than 3 degrees each side of the axial beam under normal conditions. Throughout the beam spread, the intensity of the beam shall not be less than 50% of the intensity at the axis.
 - h. Lights shall flash alternately at a minimum rate of 45 flashes per minute and a maximum rate of 65 flashes per minute.
 - i. The effective range of flashing lights equipped with 10 volt, 10 watt lamps, or equivalent, burning at rated voltages, shall be not less than 1,000 feet under bright sunlight conditions with the sun at or near its zenith.
4. Highway traffic control signals shall not be used on main-line railroad crossings in lieu of flashing light signals. However, at industrial track crossings and other places where train movements are 10 miles per hour or less, highway traffic control signals may be used in lieu of conventional flashing light signals.
5. Bell warning signals. At least 1 automatic gong-type bell shall be used with each flashing light signal except on median strip installations.
6. Automatic gate arm signals.
- a. Signals consisting of a combination of flashing lights, bells, and automatic gate shall, when indicating the approach or presence of trains, present towards the highway the appearance of horizontally flashing red lights and of a horizontal arm or arms extending over the traveled roadway a sufficient distance to cover the lane or lanes used by highway traffic approaching the crossing.
 - b. Automatic gate arms, when not indicating the approach or presence of trains, shall not obstruct or interfere with highway traffic, except as provided in subsection (B)(4)(d).
 - c. Automatic gate arms shall be mounted on posts or housing containing the arm-operating mechanism.
 - d. The design of the gate-opening mechanism shall be such as to insure proper operation during unfavorable weather conditions. In case of power failure, the gate arm shall assume the horizontal position across the roadway.
 - e. The mechanism shall be so designed that if the arms, while being raised or lowered, strike or foul an object they will readily stop, and on removal of the obstruction shall assume the position corresponding to the control mechanism.
 - f. Each gate arm extending over the roadway shall have 3 red lights, with lenses not less than 7 inches in diameter, shining in both directions along the roadway, so positioned as to insure as far as possible, that no vehicle or vehicles standing in the limits of the traffic lane or lanes approaching the crossing can obscure all 3 lights from the view of the drivers of the following vehicles. The light nearest the tip of each arm shall burn steadily, and the other 2 lights on each arm shall flash alternately in unison with the flashing lights on the roadside signal mast.
 - g. The gate arm shall, on new installations, be striped with 16 inch alternate diagonal reflectorized or fluorescent stripes of red and white.
 - h. Circuits for operation of signals shall be so arranged that the flashing lights, gate arm lights, and bell will start to operate at not less than 20 seconds before the arrival of the fastest train at the crossing. All lights shall operate at all times when the gate arm is in a position to obstruct highway traffic. The bell shall sound a warning from the time the signal lights start to operate at least until the gate arm has descended to within 10 degrees of the horizontal position.
 - i. Gate arms shall start their downward motion at not less than 3 seconds after the signal lights start to operate. Gate arms shall reach the full horizontal position before the arrival of the fastest train operated over the crossing and shall remain in that position until the rear of the train has cleared the crossing.
 - j. The bottom of the gate arms when in the horizontal position shall be not less than 3 feet nor more than 4 feet above the crown of the roadway.
 - k. Gate arms shall operate uniformly, smoothly, and complete all movement without slap or rebound, and be securely held when in the raised position.

Arizona Administrative Register
Notices of Exempt Rulemaking

7. Maintenance.
 - a. Metal parts shall be aluminum or painted aluminum, except as provided in subsection (B)(3)(e).
 - b. All materials and workmanship shall meet or exceed current industry standards in every respect, and every warning signal and sign in all details shall be constructed, installed, and maintained in a satisfactory manner.
 - c. The railroad shall provide for the maintenance of all grade crossing warning signs and signals. To this end, the railroad shall:
 - i. Provide for alternate operations of automatically controlled warning signals during periods of failure, either manually or otherwise, as soon as possible after the failure has occurred;
 - ii. Have skilled maintenance personnel available without undue delay for all emergency calls, including lamp failures;
 - iii. Provide proper maintenance for all components;
 - iv. Maintain the appearance of the installation in a satisfactory manner, with particular emphasis on painting and cleansing of optical systems;
 - v. Inspect warning signals at a frequency of not less than once every 45 days. A written record of inspection shall be retained at the railroad's office within Arizona.
 - vi. Provide standby equipment at a central location to minimize the interruption of signal operations due to equipment failure or damage.
8. Whistle posts.
 - a. Whistle posts bearing the letter "X" or "W" shall be located in advance of each public crossing at grade to warn locomotive engineers of the presence of the highway grade crossing, and allow them sufficient time to sound the warning whistle.
 - b. A person in charge of a railroad locomotive shall, before crossing any traveled public way, cause the bell to ring or a whistle, siren, or other sounding device to sound at a distance of at least 1/4 mile from a crossing and until it is reached.
- C. Additional requirements.
 1. When necessary to shove a railroad car or cars over a public grade crossing not having automatically controlled crossing signals, employees shall flag the crossing.
 2. When, during normal train operations at night, it becomes necessary to block a public grade crossing with standing railroad cars, and the crossing does not have automatically controlled crossing signals, flares, or fusees, shall immediately be placed in the center of the roadway on both sides of the track at not less than 10 feet from the railroad car or cars to warn motorists that the crossing is occupied.
 3. Detached railroad cars containing explosive or hazardous materials shall not be left standing on any grade crossing at any time.
 4. Before moving onto any public railroad-highway grade crossing, operators of any on-track equipment, including high-rail vehicles, shall insure that the automatic warning devices are activated or the crossing protected by a flagman. Public grade crossings without automatic warning devices shall be flagged by a flagman.
 5. It shall be unlawful for railroad employees to "drop" or "kick" any railroad car or cars containing hazardous materials across a grade crossing in any circumstances or any other railroad car or cars across a grade crossing unless the crossing is flagged by a flagman or traffic is restricted by automatic gate arms.
6. Grade crossing maintenance and repair shall be conducted as follows:
 - a. Whenever a highway intersects a railroad track at common grade, the appropriate highway authority shall maintain and keep in repair the roadway approaches to within 2 feet of the outside of either rail, and the railroad shall maintain the planking or other materials between the rails and for 2 feet on the outside thereof.
 - b. At crossing involving more than 1 track, maintenance by the railroad shall include that portion of the crossing:
 - i. Between the tracks not exceeding 20 feet from the center of the tracks, and
 - ii. Two feet on the outside of each of the 2 outside (field site) rails.
 - c. Unless the Commission otherwise authorizes, public grade crossings hereafter constructed shall be not less than 24 feet in effective roadway width measured at right angles with the centerline of the roadway.
 - d. Turnouts, switches, and frogs or bolted rail joints shall be so placed or relocated as to avoid placement in the paved area of a crossing.
 - e. Materials for permanent repairs on any component of a railroad-highway grade crossing surface shall be of the same type and quality or of equal quality to those which are being repaired or replaced.
 - f. Temporary repairs shall be made until the arrival of materials necessary for permanent repairs. Temporary repair shall be made within 5 working days of the date that the railroad is notified of the defect by the Commission. Permanent repairs shall be completed within 90 days from the date of notification.
 - g. The railroad shall coordinate with the highway authority any road closures and reopenings caused by the maintenance and repair of grade crossing.
 - h. The railroad shall stencil the AAR/DOT inventory number on all railroad-highway crossings.
7. Blockage of public grade crossing shall be limited as follows:
 - a. Except as provided in subsections (B)(7)(c) and (d), no railroad shall cause a public grade crossing to be blocked by railroad equipment in excess of 10 continuous minutes.
 - b. Each period of crossing blockage shall be followed by an interval of time sufficient to allow the passage of waiting traffic.
 - c. The limitations set forth in subsection (B)(7)(a) do not apply to:
 - i. Any train continuously moving in the same direction during the entire time it occupies the crossing, and
 - ii. Blockage caused by wrecks, derailments, acts of nature, mechanical failure, or other emergency conditions.
 - d. The Commission, after hearing, may grant variances from the limitations set forth in subsection (B)(7)(a), upon proper application by the railroad or appropriate highway authority.
8. A crew member of a train blocking a public crossing shall immediately take all reasonable steps, consistent with the safe operation of such train, to clear the crossing upon receiving information from a peace officer, as defined in

Notices of Exempt Rulemaking

A.R.S. Title 13, member of any fire department or operator of an emergency vehicle, as defined in A.R.S. § 28-101.1, that emergency circumstances require the clearing of the crossing.

9. The railroad shall coordinate road closures and reopenings during emergency blockages with the appropriate highway authority.
10. When authorization for preliminary engineering and estimate or any federal-aid funding crossing improvement projects is submitted to the railroad, it shall be completed by the railroad and returned to the Department of Transportation within 60 days.
11. The railroad shall notify the Commission, in writing, within 10 days of both the commencement and completion of the project. The railroad shall tender a statement to

the Commission reflecting the Commission's portion of such charges pursuant to A.R.S. § 40-337.02, within 60 days of completion of the project.

12. Federal-aid crossing improvement projects shall be completed within 15 months from the date of the Commission Order.
13. The Commission may approve an exception to any of the requirements of this Section. Such exceptions may be made upon the Commission's own initiative or upon written request from an interested party. Written requests shall contain a statement of the circumstances involved, the nature of the exception desired, and the reasons justifying such an exception. An exception shall be limited to the particular situation described in the written requests.